IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	2 CA-CR 2007-0080
Appellee,	)	DEPARTMENT A
	)	
v.	)	MEMORANDUM DECISION
	)	Not for Publication
CARLOS LEONEL BURGOS,	)	Rule 111, Rules of
	)	the Supreme Court
Appellant.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20061235

Honorable Edgar B. Acuña, Judge

AFFIRMED

John William Lovell — Tucson
Attorney for Appellant

P E L A N D E R, Chief Judge.

¶1 Appellant Carlos Burgos was convicted after a jury trial of conducting a chop shop and theft of a means of transportation by control. The trial court suspended the imposition of sentence and placed Burgos on probation for three years, ordering him to pay restitution of $7,751.91. Counsel has filed a brief in compliance with *Anders v. California*,

386 U.S. 738, 87 S. Ct. 1396 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Burgos has not filed a supplemental brief.

¶2 Counsel asks us to consider the following possible arguable issues: whether the trial court abused its discretion by denying Burgos's motion for judgment of acquittal, by admitting a stolen dealer license plate into evidence on the ground that it represented "uncharged conduct," and by excusing a member of the jury panel without admonishing the remaining jurors to draw no adverse inferences, and whether the prosecutor improperly "inserted herself personally into the trial" during her closing argument.

¶3 After the state had rested, Burgos moved for a judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P. Burgos maintained there was insufficient evidence that he had stolen the two vehicles that were the subject of the charges or that he had known the vehicles located on his property were stolen. Rather, he suggested his possession of stolen property had been unknowing and innocent, making the same claim as to the chop-shop charge. Examining the elements of the offenses, the trial court concluded that, although the evidence could be subject to different interpretations by the jury, there was sufficient evidence from which the jury could find that Burgos knew or should have known the vehicles were stolen.

¶4 Rule 20(a) provides that a judgment of acquittal should only be granted "if there is no substantial evidence to warrant a conviction." Substantial evidence is evidence that "reasonable persons could accept as adequate and sufficient to support a conclusion of

defendant's guilt beyond a reasonable doubt." *State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980). We will not disturb a trial court's denial of a Rule 20 motion absent "an abuse of discretion and will reverse . . . only if there is a complete absence of substantial evidence to support the charges." *State v. Carlos*, 199 Ariz. 273, ¶ 7, 17 P.3d 118, 121 (App. 2001).

¶5 Burgos was convicted of theft by controlling the property of another, "knowing or having reason to know that the property was stolen." A.R.S. § 13-1802(A)(5). He was also convicted of knowingly conducting a chop shop in violation of A.R.S. § 13-4702. A chop shop is defined as

> any building, lot or other premises in which [a] person[] alters, destroys, disassembles, dismantles, reassembles or stores at least one motor vehicle . . . or two or more motor vehicle . . . parts from at least one vehicle . . . that the person . . . knows were obtained by theft, fraud or conspiracy to defraud with the intent to:
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> (a) Alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate or remove the identity of the motor vehicles or motor vehicle parts, including the vehicle identification number for the purpose of misrepresenting or preventing the identification of the motor vehicles or motor vehicle parts.
>
> (b) Sell or dispose of the motor vehicles or motor vehicle parts.

A.R.S. § 13-4701(1).

¶6 Viewed "in the light most favorable to sustaining the conviction," *State v. Newnom*, 208 Ariz. 507, ¶ 2, 95 P.3d 950, 950 (App. 2004), the evidence showed that

Burgos had accepted two cars and agreed to repair them knowing or having reason to know they had been stolen. In denying the motion for judgment of acquittal, the trial court noted Burgos's statement to a police officer that Burgos's wife was concerned the vehicles could have been stolen.

¶7 Tucson police officer Daniel Spencer, who was also an automotive technician with about seventeen years' experience in the field, testified that the condition of the two vehicles would have raised suspicions that they might have been stolen. The Jeep Cherokee had been completely dismantled; the grille, lights, bumper, engine, transmission, and interior parts had been removed. The Ford F-150 was also missing numerous parts, including the transmission and interior parts. Additionally, the officer explained that Burgos had placed his own license plate on the stolen Cherokee, even though it could not be driven, and someone had removed the "public" vehicle identification number. Officers also found on Burgos's property a license plate from a stolen vehicle and a stolen dealer license plate. Of twenty to thirty vehicles on Burgos's property, the two stolen vehicles were the only ones that had been completely dismantled.

¶8 Although reasonable jurors could differ as to the inferences that might be drawn from the evidence presented, the evidence and the inferences therefrom supported the conclusion that the state had established the elements of the charged offenses. Contrary to counsel's suggestion in the *Anders* brief, Burgos's statement to Spencer that Burgos's wife was concerned that some of the vehicles on the property could have been stolen was not the

only evidence against Burgos. And, to the extent there was conflicting evidence, the conflicts did not render the evidence insufficient as a matter of law; rather, it was for the jury, as the trier of fact, to resolve such conflicts. *See State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980).

¶9 The remaining arguable issues counsel asks us to consider similarly do not warrant relief. Spencer testified that he had found a stolen dealer license plate on the property during the execution of a search warrant, and Burgos admitted he knew it was there. Although Burgos did not object to this testimony initially, he did object to the introduction of the license plate into evidence and, implicitly, to the further testimony about it as well. The trial court admitted the plate over Burgos's objection that this was evidence of "uncharged conduct," presumably a reference to impermissible evidence of other acts under Rule 404(b), Ariz. R. Evid.

¶10 Even assuming Burgos's objection related to the testimony about the license plate as well as the plate itself, the trial court did not abuse its discretion in overruling the objection. *See State v. Hampton*, 213 Ariz. 167, ¶ 45, 140 P.3d 950, 961 (2006) (trial court's decision to admit evidence will not be disturbed on appeal absent abuse of discretion). In response to the objection, the prosecutor argued that the evidence related to the offense of maintaining a chop shop. The trial court agreed, stating, "The definition of operating a chop shop includes more than specific vehicles. It's parts of vehicles, stolen

parts of vehicles, and I believe a license plate can be considered a part of a vehicle." The trial court was correct; therefore, we have no basis for disturbing its ruling.

¶11 We also reject counsel's claim that the trial court might have erred when it designated a juror as the alternate juror and then excused him without instructing the remaining jurors not to draw any negative inference, after the juror told the court he recognized a defense witness, Alegria, just as he was about to testify. After questioning the juror about how he knew the witness and after further discussion with counsel for both parties, the court decided to excuse him. Both counsel agreed, and Burgos did not request a cautionary instruction. Although we see no error, any claim would have been waived, absent fundamental, prejudicial error. *State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005) (failure to object to error forfeits right to relief for all but fundamental, prejudicial error). Counsel has cited no authority for the proposition that the court was required to give such an instruction, sua sponte, nor are we aware of any.

¶12 Finally, Burgos is not entitled to relief based on counsel's suggestion that the prosecutor might have committed misconduct during her closing argument by improperly "insert[ing] herself personally into the trial." Burgos did not object below, waiving all but fundamental error. *See State v. Thomas*, 130 Ariz. 432, 435, 636 P.2d 1214, 1217 (1981). First, the prosecutor's comment was one of several illustrations of her point that certain inferences should be drawn from certain facts. Thus, she commented that her cousins were not trusted by the family for certain reasons, and if they were to give their mother an

expensive gift, there would be reason to question where they had gotten the money to buy it. The prosecutor used another hypothetical to illustrate the same point. We cannot say the prosecutor so personally inserted herself into the proceedings that her comments amounted to misconduct. Moreover, even if we were to find the argument improper, any error could hardly be characterized as fundamental, prejudicial error. *See Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d at 607.

¶13 We have reviewed the entire record for reversible error and have found none. Consequently, we affirm the convictions and the probationary terms imposed.

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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J. WILLIAM BRAMMER, JR., Judge